



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0271

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35790.

The City of Houston (the "city") received a request for all documents relating to a particular tract of land. You have released most of the responsive information to the requestor but contend that the information submitted for our review is excepted from required public disclosure. Specifically, you claim that paragraphs 2, 3, and 4 of Exhibit 2 are excepted from disclosure by section 552.103 of the Government Code, and that the highlighted portions of Exhibit 5 are excepted from disclosure by section 552.107 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have referenced pending litigation and demonstrated how paragraphs 2, 3, and 4 of Exhibit 2 relate to that litigation. We therefore conclude that section 552.103(a) authorizes the city to withhold this information.¹

¹We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not except purely factual information from disclosure, Open Records Decision Nos. 574 (1990), 559 (1990), nor does it protect information gathered by an attorney as a fact-finder, Open Records Decision No. 462 (1987). We have marked the documents in Exhibit 5 to show which sections are excepted from disclosure by section 552.107(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 35790

Enclosures: Submitted documents

cc: Ms. Brenda Flores
Cordinadora
Auto Defense y Participacion Ciudadana
2041 Marnel Road
Houston, Texas 77055
(w/o enclosures)

(Footnote continued)

Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982).